



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Greenhorne & O'Mara, Inc.

File: B-258281

Date: January 5, 1995

R. Timothy Hanlon, Esq., Alex D. Tomaszczuk, Esq., and Jackson H. Sherrill III, Esq., Shaw, Pittman Potts & Trowbridge, for the protester.
Robert G. Watt, Esq., Watt, Tieder & Hoffer, for Michael Baker, Jr., Inc.; and Del Stiltner Dameron, Esq., and David Kasanow, Esq., McKenna & Cuneo, for Dewberry & Davis, interested parties.
Lafayette N. Johnson, Esq., Federal Emergency Management Agency, for the agency.
Robert C. Arsenoff, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against evaluation of proposal for architect-engineering services is denied where record establishes that agency had a reasonable basis for ranking the protester third and the evaluation was otherwise consistent with the published evaluation criteria.

DECISION

Greenhorne & O'Mara, Inc. (G&O) protests the evaluation of its technical proposal by the Federal Emergency Management Agency (FEMA) under solicitation No. EMW-94-R-0001 for architect and engineering (A/E) services relating to revision of flood insurance maps.

We deny the protest.

BACKGROUND

This A/E procurement was conducted pursuant to Federal Acquisition Regulation subpart 36.6, which provides that agencies shall announce their A/E requirements listing general and project-specific evaluation criteria, appoint expert evaluation boards to review qualification statements submitted in response to the synopsis by prospective offerors together with in-house data concerning the offerors' capabilities and past performance, and evaluate

and rank at least three offerors on a short list for further contract negotiations in order of ranking. In this case, in the final analysis, a 6-member FEMA board ranked G&O third on the "short list" behind Dewberry & Davis (D&D) and Michael J. Baker, Inc. (MJB), who were incumbent contractors.

G&O alleges that this ranking was based on a flawed evaluation. Specifically, the protester asserts that: (1) past performance was improperly evaluated; (2) the board used improper procedures to rerank proposals during the evaluation process; (3) the board favored the incumbents by using transition costs as an evaluation criterion when it was not provided for in the announcement; and (4) the evaluation record contained inconsistent and unsupported findings with respect to G&O's proposal.

In reviewing a protest of an agency's selection of a contractor for A/E services, our function is not to reevaluate the offeror's capabilities or to make our own determination of the relative merits of competing firms. Rather, the procuring officials enjoy a reasonable degree of discretion in evaluating the submissions, and our review examines whether the agency's selection was reasonable and in accordance with the published criteria. A protester's mere disagreement with the agency's evaluation does not show that it is unreasonable. ConCeCo Eng'g, Inc., B-250666, Feb. 3, 1993, 93-1 CPD ¶ 98. Under this standard, as reflected in the following analysis, we find no basis upon which to disturb the agency's ranking of potential A/E contractors.

PAST PERFORMANCE

One of the evaluation criteria was past performance/experience which was ranked on a 10-point scale. G&O asserts that proposals were subjectively ranked by the board and that the difference between its ranking of 7.8 (the highest received) and MJB's (7.5) should have been much greater. The protester basis this assertion on the fact that the evaluators used their individual knowledge of offerors' past performance to rank proposals. G&O states that the only board member with personal knowledge of MJB's performance was the current FEMA project manager for that firm's contract who assigned that firm only 5 points. G&O thus concludes that MJB should not have received a consensus ranking of 7.5. G&O further asserts that, had a project manager on one of its previous FEMA contracts been consulted, its own score would have been higher than 7.8.

G&O addresses none of the specific findings of the evaluators with respect to any offeror's past experience; rather, G&O focuses its concerns on the point score

differential. The point scores were the product of consultations among the evaluators and the record shows that members of the evaluation board were familiar with each of the offeror's past performance as reflected in the offerors' own qualification statements and performance evaluations of the Army Corps of Engineers. As the minutes of the board state, "each board member . . . had past experience with the various firms that could be shared." The record also shows that, contrary to G&O's premise, at least two other board members other than MJB's project manager on the incumbent contract had knowledge of that offeror's past experience. Finally, there is no support in the record for G&O's speculation that consultation with a FEMA project manager on previous G&O contracts would have substantially raised its score.

BOARD PROCEDURES

The board's recommendations were of a consensus nature following individual rankings and discussions among board members. At one stage of the evaluation, the record shows, G&O was ranked second by a consensus of all six board members. Subsequently, the board deliberated and the evaluators shared information and listed various strengths and weaknesses of the competing offerors. Following this process, two of the members elected not to rerank proposals while four members did. The consensus following this process placed G&O third overall.

G&O objects to the process leading to the final ranking, asserting in essence that two members should not be permitted to "defer" to the rest of the board and that, in accepting a vote of only four members which ranked G&O third in lieu of a vote of all six members which ranked the firm second, FEMA acted improperly.

Nothing in FAR subpart 36.6 specifies procedures regarding how the board should arrive at its rankings. Here, FEMA chose a consensus approach emphasizing deliberation among the members and reexamination of rankings after that deliberation. A majority of the board here chose to reorder the rankings after deliberations and, notwithstanding G&O's incorrect supposition to the contrary, the views of the minority of board members were taken into account. We see nothing improper with this approach.

TRANSITION COSTS AND INCUMBENCY

G&O alleges that, between the time it was ranked second and the final evaluation rankings which placed it third, the board improperly considered the possibility that a nonincumbent contractor might cost FEMA more because of transition costs. G&O argues that this was improper because

such costs were not an identified evaluation criterion and states that the consideration of such costs impermissibly favored incumbents. G&O also argues that the evaluators expressed a preference for the incumbent contractor since the evaluators stated that one of the incumbents has "institutional knowledge" and the other has the "[a]dvantage of having contracts with FEMA for many years."

The record of the evaluation does not support these assertions. While the record shows that a board member noted that transition costs could be considered in the event that there were two technically equal proposals, the board simply never got to that point since G&O was, in the final analysis, not considered to be technically equal to either of the other two "short list" offerors. Moreover, we find no impropriety in the evaluators' comments concerning the incumbents since past experience was an evaluation criterion and we further note that, rather than being prejudiced in the evaluation of this factor, G&O received the highest score.

OTHER INCONSISTENCIES

G&O asserts that the record includes inconsistencies in the evaluation of its proposal. For example, G&O points out that, in spite of the fact that it was "listed as being weak in DFIRM [digital flood insurance rate maps] capacity" under the second evaluation factor, "the record reflects that [G&O] tied with Baker as receiving the top score for this factor." Since G&O received 14.2 out of 15 possible points on this factor, its complaint is unclear. In any event, G&O's failure to receive all 15 possible points on this factor can be explained by the fact that the second evaluation criterion contains elements other than DFIRM capability so that it is not inconsistent for the protester to have received a high overall rating while being weak in one of the two areas. Further, a reading of the complete evaluation record discloses that G&O was merely weaker than the other offerors in DFIRM capability.

G&O also asserts that the board's final report contains conflicting statements with regard to strengths and weaknesses regarding its knowledge of alluvial fan methodology and its staffing and management approach. For example, the firm was credited with having an "adequate understanding of alluvial fan methodology" while lacking an "understanding of timing for processing alluvial fan revision[s]." These statements are not inconsistent in that the former expresses a general criticism about understanding a methodology while the latter expresses a particular weakness with regard to procedures to be followed. Likewise, we find no contradiction in the evaluators crediting G&O with an innovative management approach while

questioning whether that approach provided for enough people to manage the contract successfully. While G&O asserts that these statements are representative of a "fatally flawed analysis," this assertion is at best an expression of a disagreement with the evaluators' assessment of the protester's technical capabilities and as such does not provide a basis for sustaining the protest. ConCeCo Eng'g, Inc., supra.

The protest is denied.

Ronald Berger
h Robert P. Murphy
General Counsel